

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)
)
Iftron Technologies, Inc.) File No. EB-08-SE-693
) NAL/Acct. No. 200932100067
) FRN 0018899377
)

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: June 26, 2009

Released: June 29, 2009

By the Chief, Spectrum Enforcement Division, Enforcement Bureau:

I. INTRODUCTION

1. In this *Notice of Apparent Liability for Forfeiture and Order* (“NAL”), we find Iftron Technologies, Inc. (“Iftron”) apparently liable for a forfeiture in the amount of five thousand six hundred dollars (\$5,600) for willful and repeated violation of Section 302(b) of the Communications Act of 1934, as amended (“Act”),¹ and Sections 2.803 and 15.205(a) of the Commission’s Rules (“Rules”).² The apparent violation involves Iftron’s marketing of an audio/video transmitter that operates on a restricted frequency and therefore is not eligible for a grant of equipment certification.

II. BACKGROUND

2. The Enforcement Bureau’s Spectrum Enforcement Division (“Division”) received information that Iftron was marketing audio/video transmitters that are capable of operating on a restricted frequency, 2.468 GHz. On October 10, 2008, Division staff conducted internet research on Iftron’s website, www.iftrontech.com. During the internet research, Division staff observed that Iftron was offering for sale the Stinger Pro 2.4 GHz 500 mW audio/video transmitter (“Stinger Pro”). By letter of inquiry (“LOI”) dated February 18, 2009, the Division initiated an investigation of Iftron’s marketing of the Stinger Pro, and instructed Iftron to provide specific information regarding the manufacture, marketing, and certification status of the Stinger Pro, as well as any other audio/video transmitter device that it marketed in the United States.³ In its March 30, 2009, response to the LOI, Iftron states that it is the manufacturer of the Stinger Pro, that it began manufacturing the device in June 2006, and that it sold eight units of the device in the United States between June 2006 and July 2008.⁴ Iftron further states that in early July 2008, it reviewed the frequencies on which the Stinger Pro transmitted and discovered that

¹ 47 U.S.C. § 302a(b).

² 47 C.F.R. §§ 2.803 and 15.205(a).

³ Letter from Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission to Ira Faberman, President, Iftron Technologies, Inc. (February 18, 2009).

⁴ Letter from Ira S. Faberman, President, Iftron Technologies, Inc. to Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission (March 30, 2009) (“LOI Response”) at 1-2.

the highest of the four transmitter frequencies used by that device, specifically 2.468 GHz, was outside of the authorized amateur radio frequencies set forth in Section 97.301 of the Rules.⁵

3. Iftron states that upon discovering that the Stinger Pro mistakenly transmitted on a frequency that was outside those frequencies that are permitted for amateur radio use under Section 97.301 of the Rules, it began modifying all transmitters shipped to U.S. addresses to ensure that they were no longer capable of transmitting on 2.468 GHz.⁶ Iftron also states that it modified the transmitter specifications of the Stinger Pro on its website in July of 2008 to reflect the change.⁷ Iftron claims that it does not manufacture or market in the United States any other 2.4 GHz audio/video transmitter device.⁸

III. DISCUSSION

A. Marketing of Unauthorized Equipment

4. Section 302(b) of the Act provides that “[n]o person shall manufacture, import, sell, offer for sale, or ship devices or home electronic equipment and systems, or use devices, which fail to comply with regulations promulgated pursuant to this section.” Section 2.803(a)(1) of the Rules provides that:

Except as provided elsewhere in this section, no person shall sell or lease, or offer for sale or lease (including advertising for sale or lease), or import, ship, or distribute for the purpose of selling or leasing or offering for sale or lease, any radio frequency device⁹ unless ... [i]n the case of a device subject to certification, such device has been authorized by the Commission in accordance with the rules in this chapter and is properly identified and labeled as required by §2.925 and other relevant sections in this chapter.

Additionally, Section 2.803(g) of the Rules, provides in pertinent part that:

[R]adio frequency devices that could not be authorized or legally operated under the current rules ... shall not be operated, advertised, displayed, offered for sale or lease, sold or leased, or otherwise marketed absent a license issued under part 5 of this chapter or a special temporary authorization issued by the Commission.¹⁰

Intentional radiators,¹¹ such as audio/video transmitters, are generally required by Section 15.201 of the Rules¹² to be approved prior to marketing through the equipment certification¹³ procedures described in Sections 2.1031 – 2.1060 of the Rules.¹⁴

⁵*Id.* See 47 C.F.R. § 97.301.

⁶LOI Response at 1.

⁷ Iftron's website currently notes that units of the Stinger Pro available in the United States transmit on 2.414, 2.432, and 2.450 GHz, and that units that additionally transmit on 2.468 GHz are “available elsewhere.” See http://www.iftrontech.com/2.4GHz-Transmitters/c44/p100/Stinger-Pro-2.4GHz-500MW-AVD-Transmitter/product_info.html (last accessed June 23, 2009).

⁸ LOI Response at 3.

⁹ 47 C.F.R. § 2.801 defines a radiofrequency device as “any device which in its operation is capable of emitting radiofrequency energy by radiation, conduction, or other means.”

¹⁰ 47 C.F.R. § 2.803(g).

¹¹ An intentional radiator is “[a] device that intentionally generates and emits radio frequency energy by radiation or induction.” 47 C.F.R. § 15.3(o).

5. Iftron admits that from June 2006,¹⁵ when it first manufactured the device, to July of 2008, it manufactured and marketed units of the Stinger Pro that were capable of transmitting on 2.468 GHz.¹⁶ Although amateur radio equipment is not required to be certified,¹⁷ the Stinger Pro, as sold in the United States prior to July 2008, was capable of operating on a frequency outside of the authorized amateur radio frequencies and, therefore, could not legally be marketed in the United States as amateur radio equipment. Moreover, because this device was capable of operation on a restricted frequency listed in Section 15.205(a) of the Rules,¹⁸ the device could not comply with the FCC's technical standards and therefore could not be certified or marketed within the United States.

6. Accordingly, we find that Iftron apparently marketed¹⁹ a radio frequency device that operates on a restricted frequency and therefore is not eligible for a grant of equipment certification in willful²⁰ and repeated²¹ violation of Section 302(b) of the Act and Sections 2.803 and 15.205(a) of the Rules.

¹² 47 C.F.R. § 15.201.

¹³ A certification is an equipment authorization issued by the Commission, based on representations and test data submitted by the applicant. *See* 47 C.F.R. § 2.907(a).

¹⁴ 47 C.F.R. §§ 2.1031 – 2.1060.

¹⁵ LOI Response at 2.

¹⁶ LOI Response at 1. Elsewhere in its response, Iftron admits that it sold a total of 10 units of the Stinger Pro in the United States between August 31, 2006 and March 30, 2009, but states that all units of the Stinger Pro that were shipped to addresses in the United States after July of 2008 were modified so that those units were incapable of transmitting on 2.468 GHz. *Id.*

¹⁷ *See, Facilitating Opportunities for Flexible, Efficient, and Reliable Spectrum Use Employing Cognitive Radio Technologies*, Memorandum Opinion and Order, 22 FCC Rcd 8053, 8058 (2007); *see also, Pilot Travel Centers, LLC*, Notice of Apparent Liability, 19 FCC Rcd 23113, 23114 (2004) (“[R]adio transmitting equipment that transmits solely on Amateur Radio Service (“ARS”) frequencies is not subject to equipment authorization requirements prior to manufacture or marketing.”).

¹⁸ 47 C.F.R. §15.205(a). This section allows intentional radiators to transmit only spurious emissions in the restricted frequency bands. Section 2.1 of the Rules, 47 C.F.R. § 2.1, defines spurious emissions as “[e]missions on a frequency or frequencies which are outside the necessary bandwidth and the level of which may be reduced without affecting the corresponding transmission of information. Spurious emissions include harmonic emissions, parasitic emissions, intermodulation products and frequency conversion products, but exclude out-of-band emissions.”

¹⁹ Marketing, as defined in 47 C.F.R. § 2.803(e)(4), “includes sale or lease, or offering for sale or lease, including advertising for sale or lease, or importation, shipment, or distribution for the purpose of selling or leasing or offering for sale or lease.”

²⁰ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that “[t]he term ‘willful’, ... means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act” *See Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991) (“Southern California”).

²¹ Section 312(f)(2) of the Act provides that “[t]he term ‘repeated’, ... means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.” 47 U.S.C. § 312(f)(2). *See, e.g., Callais Cablevision, Inc., Grand Isle, Louisiana*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359, 1362 (2001) (“Callais Cablevision”) (issuing a Notice of Apparent Liability for, *inter*

B. Proposed Forfeiture

7. Section 503(b) of the Act authorizes the Commission to assess a forfeiture for each willful or repeated violation of the Act or of any rule, regulation, or order issued by the Commission under the Act.²² In exercising such authority, we are required to take into account “the nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.”²³

8. Section 503(b)(6) of the Act bars the Commission from proposing forfeiture for violations that occurred more than a year prior to the issuance of a Notice of Apparent Liability.²⁴ Section 503(b)(6) does not, however, bar the Commission from assessing whether Iftron’s conduct prior to that time period apparently violated the provisions of the Act and Rules and from considering such conduct in determining the appropriate forfeiture amount for violations that occurred within the one-year statutory period.²⁵ Thus, while we may consider the fact that Iftron’s conduct commenced more than one year ago, the forfeiture amount we propose herein relates only to Iftron’s apparent violations that have occurred within the past year.

9. Pursuant to the Commission’s *Forfeiture Policy Statement*²⁶ and Section 1.80 of the Rules,²⁷ the base forfeiture amount for the marketing of unauthorized equipment is \$7,000. At the time of Iftron’s apparent violation, Section 503(b)(2)(D) of the Act authorized the Commission to assess entities such as Iftron a maximum forfeiture of \$11,000 for each violation, or each day of a continuing violation, up to a statutory maximum forfeiture of \$97,500 for any single continuing violation.²⁸

alia, a cable television operator’s repeated signal leakage).

²² 47 U.S.C. § 503(b).

²³ 47 U.S.C. § 503(b)(2)(E). *See also* 47 C.F.R. § 1.80(b)(4), Note to paragraph (b)(4): Section II. Adjustment Criteria for Section 503 Forfeitures.

²⁴ 47 U.S.C. § 503(b)(6).

²⁵ *See* 47 U.S.C. § 503(b)(2)(D), 47 C.F.R. § 1.80(b)(4); *see also* Behringer USA, Inc., Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 1820, 1825 (2006), *forfeiture ordered*, 22 FCC Rcd. 1051 (2007) (forfeiture paid); Globecom, Inc. d/b/a Globecom Global Communications, Notice of Apparent Liability for Forfeiture, 18 FCC Rcd 19893, 19903 (2003), *forfeiture ordered*, 21 FCC Rcd 4710 (2006); Roadrunner Transportation, Inc., Forfeiture Order, 15 FCC Rcd 9669, 9671-71 (2000); Cate Communications Corp., Memorandum Opinion and Order, 60 RR 2d 1386, 1388 (1986); Eastern Broadcasting Corp., Memorandum Opinion and Order, 10 FCC 2d 37 (1967), *recon. den.*, 11 FCC 2d 193 (1967); Bureau D’Electronique Appliquee, Inc., Notice of Apparent Liability for Forfeiture, 20 FCC Rcd 3445, 3447-48 (Enf. Bur., Spectrum Enf. Div. 2005), *forfeiture ordered*, 20 FCC Rcd 17893 (Enf. Bur., Spectrum Enf. Div. 2005) (forfeiture paid).

²⁶ *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997), *recon. denied* 15 FCC Rcd 303 (1999).

²⁷ 47 C.F.R. § 1.80.

²⁸ 47 U.S.C. § 503(b)(2)(D). The Commission has amended Section 1.80(b)(3) of the Rules, 47 C.F.R. § 1.80(b)(3), three times to increase the maximum forfeiture amounts, in accordance with the inflation adjustment requirements contained in the Debt Collection Improvement Act of 1996, 28 U.S.C. § 2461. *See Amendment of Section 1.80 of the Commission’s Rules and Adjustment of Forfeiture Maxima to Reflect Inflation*, 15 FCC Rcd 18221 (2000) (adjusting the maximum statutory amounts from \$10,000/\$75,000 to \$11,000/\$87,500); *Amendment of Section 1.80 of the Commission’s Rules and Adjustment of Forfeiture Maxima to Reflect Inflation*, 19 FCC Rcd 10945 (2004) (adjusting the maximum statutory amounts from \$11,000/\$87,500 to \$11,000/\$97,500); *Amendment of Section 1.80 of the Commission’s Rules and Adjustment of Forfeiture Maxima to Reflect Inflation*, 23 FCC Rcd 9845 (2008)

10. The record establishes that between June 2006 until July 2008, Iftron marketed a radio frequency device that is capable of transmitting on 2.468 GHz, a restricted frequency. Accordingly, Iftron is apparently liable for a base forfeiture amount of \$7,000.

11. We find that a downward adjustment from the \$7,000 base forfeiture amount is warranted, based on Iftron's demonstrated good faith efforts to come into compliance prior to the initiation of an investigation by the Commission.²⁹ In July 2008, Iftron discovered that the Stinger Pro was transmitting on a frequency that was outside of the permitted amateur radio frequencies, and in the same month Iftron disabled the ability of all of the Stinger Pro devices that were being sold or marketed in the United States to transmit on the 2.468 GHz frequency. We do not find, however, that a further downward adjustment is warranted, based on Iftron's claim that it mistakenly believed that the Stinger Pro conformed to Section 97.301 of the Rules. The Commission has long held that a downward adjustment of forfeiture is not justified where violators claim their actions or omissions were due to inadvertent errors.³⁰

12. Based on all of the foregoing, we therefore propose a \$5,600 forfeiture against Iftron for marketing radio frequency device that in willful and repeated violation of Section 302(b) of the Act and Sections 2.803 and 15.205(a) of the Rules.

IV. ORDERING CLAUSES

13. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Section 1.80 of the Commission's Rules,³¹ Iftron Technologies, Inc., is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of five thousand six hundred dollars (\$5,600) for marketing a radio frequency device that operates on a restricted frequency and therefore is not eligible to receive a grant of equipment certification in willful and repeated violation of Section 302(b) of the Act and Sections 2.803 and 15.205(a) of the Rules.

14. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Commission's Rules, within thirty days of the release date of this Notice of Apparent Liability for Forfeiture, Iftron Technologies Inc., **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

15. Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Account Number and FRN Number referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005

(adjusting the maximum statutory amounts from \$11,000/\$97,500 to \$16,000/\$112,500). The most recent inflation adjustment took effect September 2, 2008. *See* 73 Fed. Reg. 44663-5. Iftron's apparent violations occurred prior to this date and therefore are subject to the old statutory forfeiture limits.

²⁹ *See e.g., Petracom of Texarkana, LLC*, Forfeiture Order, 19 FCC Rcd 8096, 8097-8098 (Enf. Bur., 2004) (finding that a broadcast station licensee's initiation of remedial measures to correct a violation prior to Commission inspection of the station was a mitigating factor warranting reduction of the forfeiture).

³⁰ *See e.g., PJB Communications of Virginia, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 2088 (1992); *Southern California*, 6 FCC Rcd at 4387 (stating that "inadvertence ... is at best, ignorance of the law, which the Commission does not consider a mitigating circumstance").

³¹ 47 U.S.C. § 503(b), 47 C.F.R. § 1.80.

Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters "FORF" in block number 24A (payment type code). Requests for full payment under an installment plan should be sent to: Chief Financial Officer -- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554. Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov with any questions regarding payment procedures. Iftron will also send electronic notification on the date said payment is made to Sam.Peoples@fcc.gov and Ricardo.Durham@fcc.gov.

16. The response, if any, must be mailed to the Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554, ATTN: Enforcement Bureau – Spectrum Enforcement Division, and must include the NAL/Acct. No. referenced in the caption.

17. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices; or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

18. **IT IS FURTHER ORDERED** that a copy of this *Notice of Apparent Liability for Forfeiture* shall be sent by Certified Mail, Return Receipt Requested, and by first class mail, to Ira Faberman, President, Iftron Technologies, Inc., 1895 3rd Avenue, Longmont, Colorado 80501-4763.

FEDERAL COMMUNICATIONS COMMISSION

Kathryn S. Berthot
Chief, Spectrum Enforcement Division
Enforcement Bureau